

United States
Circuit Court of Appeals⁷

For the Ninth Circuit.

CHAN HAI,

Appellant,

vs.

LUTHER WEEDIN, as Commissioner of Immigration at the Port of Seattle, Washington,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Western District of Washington, Northern Division.

FILED

AUG 27 1926

F. D. MONCKTON,
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

HUGH C. TODD, Esquire, Attorney for Appellant,
323 Lyon Building, Seattle, Washington.

THOMAS P. REVELLE, Esquire, Attorney for
Appellee,
310 Federal Building, Seattle Washington.

C. T. McKINNEY, Esquire, Attorney for Appellee,
315 Federal Building, Seattle, Washing-
ton. [1*]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 10,408.

In the Matter of the Application of CHAN HAI
for a Writ of Habeas Corpus.

PETITION FOR WRIT OF HABEAS CORPUS.

Comes now Chan Hai, and petitions this Court
to issue a writ of habeas corpus to inquire into the
cause of the detention of said petitioner by Honorable Luther Weedin, Commissioner of Immigration,
at Seattle, Washington, and shows to this Court
as follows:

I.

That your petitioner Chan Hai is a citizen of the
Philippine Islands, of Chinese descent, and applied
for admission to the United States from the Philip-

*Page-number appearing at the foot of page of original certified Transcript of Record.

pine Islands as a Section Six Merchant and member of an exempt class of Chinese persons, as set forth in the treaties and laws relating to the admission of Chinese merchants to the United States, and is now detained at the United States Immigration Station, at Seattle, Washington, by Hon. Luther Weedin, Commissioner of Immigration, in the proceedings from his application to be admitted to the United States.

II.

That the above-named petitioner is imprisoned and restrained of his liberty by the said Commissioner of Immigration of said Immigration Detention Station; that he is not committed and is not detained by virtue of any judgment, decree, final order or process issued by a Court or Judge of the United States, in a case where such Courts or Judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by commencement of legal proceedings in such a court, nor is he detained by virtue of the final [2] judgment or decree of a Court or competent tribunal of civil or criminal jurisdiction or the final order of such tribunal made in the special proceedings instituted for any cause except to punish him for contempt; or by virtue of an execution or other process issued upon such a judgment, decree or final order; or by virtue of a warrant issued from any court upon an indictment or information.

III.

That the cause or pretense of the imprisonment and restraint of the said petitioner is that the said Com-

missioner ruled that the said petitioner is an alien Chinese person, ineligible to citizenship under Section 13, Subdivision "C" of the Immigration Act of 1924, not being a member of any of the exempt classes of Chinese entitled to come into or remain in the United States, and accordingly denied him admission, from which findings an appeal was taken to the Secretary of Labor, which said appeal was thereafter dismissed by the Secretary of Labor.

IV.

That the above-named immigration officials have misapplied the law applicable in this case in their decision excluding said petitioner.

V.

That the immigration records in regard to the application of said petitioner to be admitted to the United States as a Section Six Merchant show that he is a citizen of the Philippine Islands, of Chinese descent, having applied for admission to the United States upon his arrival at the Port of Seattle on the S. S. "President McKinley," January 11, 1926, presenting as evidence of his right to be admitted a Section Six Certificate issued to him by the Collector of Customs for the Philippine Islands at Manila, September 19, 1925, bearing the photograph of said petitioner, said certificate being signed and sealed by the Insular Collector of Customs, Manila, Philippine Islands, [3] which certificate is in proper form and the certificate provided by law as the sole evidence of his right to be admitted to the United States as a Section Six Merchant, being a person of Chinese descent; and that the petitioner

is the identical person to whom said certificate was issued, and that the truth of the facts therein set forth were examined into and verified under seal by said Collector of Customs, as provided by law, which certificate has not been controverted or the facts therein stated disproved.

VI.

That the evidence presented and testimony taken at petitioner's hearing before the immigration officials at Seattle established the above and foregoing facts, and there is no evidence or testimony to the contrary; that said decision is arbitrary and contrary to law; that there is absolutely no evidence in the record to disprove the right of this petitioner to be admitted into the United States; and that said decision, aside from being contrary to law and treaty, shows that said immigration officials greatly abused their discretion holding that said petitioner was not entitled to be admitted to the United States.

VII.

That the above-named petitioner is being restrained of his liberty without due process of law, in violation of the provisions of the Constitution of the United States and the laws and treaties governing such cases made and provided; that he is wrongfully, illegally and arbitrarily restrained of his liberty, and that said immigration officials are about to deport him, and that unless this Court intervenes he will be deported forthwith. [4]

WHEREFORE, your petitioner prays that a writ of habeas corpus may issue, directed to the Hon. Luther Weedon, Commissioner of Immigration, at

Seattle, Washington, commanding him to have the body of said petitioner before Honorable Jeremiah Neterer, Judge of the United States District Court, Western District of Washington, Northern Division, at the Federal Building, Seattle, Washington, at such time as in said writ may be named, to do and receive what shall then and there be considered concerning said petitioner, together with the time and cause of such detention; and

Further, that an order to show cause be issued by said Court ordering the said Honorable Luther Weedin, Commissioner of Immigration at Seattle, Washington, to appear and show cause on the 8th day of March, 1926, at 2:00 o'clock P. M., why said writ should not issue, and to do and receive what shall then and there be considered concerning the said petitioner with the time and cause of his detention.

Dated at Seattle, Washington, February 26, 1926.

CHAN HAI,
Petitioner.

HUGH C. TODD,
Attorney for Petitioner.

State of Washington,
County of King,—ss.

Chan Hai, being first duly sworn, through interpreter, on oath deposes and says; that he is the petitioner in the above-entitled matter; that he has read the above petition by and through an interpreter, knows the contents thereof, and believes the same to be true.

CHAN HAI.

Subscribed and sworn to before me this 26th day of February, 1926.

[Seal] D. L. YOUNG,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed Feb. 26, 1926. [5]

POSTAL TELEGRAPH—COMMERCIAL
CABLES.

SFB63 25 Collect Cable. 1926 Mar. 5 PM 8 26
Manila.

Attorney Todd 626
Seattle

Original section six merchant certificate issued
a
Chan Hoi, September Nineteen last year deliveredd
him Duplicate on file bearing signature his hand-
writing

ALDANESE.

[Endorsed]: Filed Mar. 15, 1926. [6]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

On reading and filing the petition of Chan Hai, duly signed and verified, whereby it appears that the above-named applicant is wrongfully and illegally imprisoned and restrained of his liberty by Honorable Luther Weedin, Commissioner of Immigration at Seattle, Washington, and stating wherein

the illegality exists, from which it appears that a writ of habeas corpus to issue;

NOW, THEREFORE, it is by this Court

ORDERED, ADJUDGED and DECREED that the said Luther Weedin be required to appear before me in the courtroom of said Court on the 8th day of March, 1926, at two o'clock P. M., of said day, to show cause, if any he have, why the writ of habeas corpus should not be issued as prayed for in the petition on file herein, together with the time and cause of the detention of said applicant; and it is hereby

FURTHER ORDERED that the said Commissioner of Immigration shall retain custody of said applicant until the further order of this Court, provided that the applicant herein deposit funds to pay the maintenance of said applicant while so detained in the Immigration Station.

Dated this 26th day of February, 1926.

JEREMIAH NETERER,

District Judge.

[Endorsed]: Filed Feb. 26, 1926. [7]

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Wash.,—ss.

I hereby certify and return that I served the annexed order to show cause on the therein named Luther Weedin, by handing to and leaving a true

and correct copy thereof with him at Seattle in said District on the 26th day of Feby, A. D. 1926.

E. B. BENN,
U. S. Marshal.
By E. Laird,
Deputy.

[Endorsed]: Filed Feb. 26, 1926. [8]

[Title of Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE.

To the Honorable JEREMIAH NETERER, Judge of the District Court of the United States for the Western District of Washington.

Comes now the respondent, Luther Weedin, United States Commissioner of Immigration at Seattle, Washington, and, for answer and return to the order *you* show cause entered herein, certifies that the said Chan Hai was detained by this respondent at the time he arrived at the port of Seattle, Washington, to wit: January 11, 1926, as an alien Chinese person not entitled to admission to the United States under the laws of the United States, pending a decision on his application for admission as a Section Six Merchant and citizen of the Philippine Islands; that, at a hearing before a Board of Special Inquiry at the Seattle Immigration Office, the said Chan Hai was unable to furnish satisfactory proof that he was entitled to admission to the United States under the status claimed, and his application for admission was denied for that

reason; that the said Chan Hai appealed from the decision of the Board of Special Inquiry to the Secretary of Labor and thereafter the decision of the Board of Special Inquiry was affirmed by the Secretary of Labor; that, since the final decision of the Secretary of Labor, this respondent has held, and now holds and detains, the said Chan Hai for deportation from the United States as a person not entitled to admission to the United States under the laws of the United States, and subject to deportation under the laws of the United States. [9]

The original record of the Department of Labor, both on the hearing before the Board of Special Inquiry at Seattle, Washington, and on the submission of the record on the appeal to the Secretary of Labor at Washington, D. C., in the matter of the application of Chan Hai for admission to the United States, is hereto attached and made a part and parcel of this return as fully and completely as though set forth herein in detail.

WHEREFORE, respondent prays that the petition for a writ of habeas corpus be DENIED.

LUTHER WEEDIN.

United States of America,
Western District of Washington,
Northern Division,—ss.

Luther Weedin, being first duly sworn, on oath deposes and says: That he is United States Commissioner of Immigration at Seattle, Washington, and the respondent named in the foregoing return; that he has read the foregoing return, knows the contents thereof and believes the same to be true.

LUTHER WEEDIN.

Subscribed and sworn to before me this 10 day of March, 1926.

[Seal] D. L. YOUNG,
Notary Public in and for the State of Washington,
Residing at Seattle, Washington.

[Endorsed]: Filed Mar. 12, 1926. [10]

[Title of Court and Cause.]

DECISION.

Filed March —, 1926.

The petitioner, an infant 19 years of age, an orphan, born in China of a Chinese father and a Filipino mother, a resident of Manila, Philippine Islands after March 8, 1925, seeks admission to the United States as a merchant and presents a certified copy of Section Six Chinese Exclusion Act Certificate duly issued. He was denied admission. He says a fair trial was denied him.

He possesses exchange in the sum of One Thousand Dollars, but has no other funds. He claims to be engaged in the exporting and importing business in Manila with his six brothers, the oldest of whom is 26 years and the youngest 17 years of age, since April 1st, 1925. The estimated value of the business is about Six Thousand Dollars. The One Thousand Dollars is income from his salary. His total financial worth is "a little over Two Thousand Dollars Gold." The value of the business at the time the certificate was issued in September, 1925, he says, was a little over Five Thousand Dollars in

gold. The original contribution to the capital of the concern was a little over Two Thousand Dollars. Before leaving China for Manila, he sold some property for Six or Seven Hundred Dollars, and one of his brothers gave him the balance of the money to make up the sum contributed to the business. Three brothers were denied admission. The testimony in those hearings, which is made a part of this hearing, disclosed that the brothers on arrival had in their possession \$45.00, \$40.00, and \$13.00, respectively. Each claimed to be working in stores—one in a grocery store, one in a hardware store, and one is a general worker in a store. The petitioner says he was sometimes head bookkeeper, sometimes assistant. He has no friends or acquaintances in this country, is an utter stranger, has had no correspondence with anyone with relation to business or otherwise.

HUGH C. TODD, Esq., Attorney for Petitioner.

C. T. McKINNEY, Esq., U. S. Asst. Dist. Atty.,
Attorney for United States.

JEREMIAH NETERER, District Judge.

I think there is evidence that the certificate, waiving the fact that it is a certified copy, has been fairly contradicted. The term "merchant" has a definite meaning. It has been defined to be strictly a buyer, but by extension, includes one who sells. [11] Kinney, Law Dict. and Glos. 459. A merchant is one who traffics or carries on trade with foreign countries, or who exports and imports goods and sells them by wholesale, Webster Dict.; Bou-

vier's Law Dict. A person engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name, and who during the time does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant. *Tom Hong vs. U. S.*, 193 U. S. 517. To buy and sell a person must be competent to contract and to carry forward the business and qualified to meet the exigencies of trade. An infant is incompetent to contract, except for the necessaries of life. The incapacity to contract bars ratification of it. The fact that an infant undertakes to trade or engage in business for himself does not cure his incapacity. *Sanger vs. Hibbard*, 104 Fed. 455. While an infant may become a partner with an adult, such an agreement is voidable at his election. *Continental National Bank vs. Strauss*, 137 N. Y. 148.

I believe a fair construction of the treaty provision implies persons competent to carry on the business of marchant or trader in the usuel fashion without legal impediment. There is evidence in the case to sustain the Department that the petitioner has not qualified under Section Six of the Exclusion Act and, if admitted, would likely become a public charge. Writ denied.

NETERER,

United States District Judge.

[Endorsed]: Filed Mar. 22, 1926. [12]

[Title of Court and Cause.]

ORDER DENYING WRIT.

The above-entitled matter having come on for hearing before this Court on the 15th day of March, 1926, on the return of the Commissioner of Immigration to the order to show cause herein, respective parties being represented by attorneys of record, and the Court being fully advised in the premises did this day sign and enter herein his written opinion denying the petition for the writ of habeas corpus:

NOW, THEREFORE, it is by this Court ORDERED, ADJUDGED, and DECREED that the writ of habeas corpus as prayed for herein be and the same is hereby denied; provided however that petitioner may within five days file notice of appeal, and in the event appeal is taken, deportation shall be stayed pending the determination of said appeal; provided also that petitioner's maintenance at the immigration station be provided for while he is detained therein under these proceedings.

Done in open court this 22d day of March, 1926.

JEREMIAH NETERER,

District Judge.

O. K.—HUGH C. TODD,

Attorney for Petitioner.

[Endorsed]: Filed Mar. 22, 1926. [13]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To Luther Weedin, United States Commissioner of Immigration for the Port of Seattle; and to Thos. P. Revelle and C. T. McKinney, His Attorneys:

YOU, AND EACH OF YOU, are hereby notified that Chan Hai, appellant above named, hereby and now appeals from that certain order, judgment and decree made herein by the above-entitled court on the 22d day of March, 1926, adjudging, holding, finding and decreeing that the above-named petitioner be denied a writ of habeas corpus, and the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

HUGH C. TODD,
Attorney for Appellant.

Service accepted 3/27/26.

C. T. McKINNEY,
Asst. U. S. Atty.

[Endorsed]: Filed Mar. 27, 1926. [14]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Chan Hai, the appellant above named, deeming himself aggrieved by the order and judgment entered herein on the 22d day of March, 1926, does hereby appeal from the said order and judgment

to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that a transcript and record of proceedings and papers upon which said order and judgment is made, fully authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States.

HUGH C. TODD,
Attorney for Applicant.

Service accepted 3/27/26.

C. T. McKINNEY,
Asst. U. S. Atty.

[Endorsed]: Filed Mar. 27, 1926. [15]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

I.

The Court erred in holding and deciding that a writ of habeas corpus should be denied appellant herein.

II.

The Court erred in holding and deciding that the petitioner herein, a citizen of the Philippine Islands, of Chinese descent, and a domiciled merchant of Manila, presenting a Section Six Merchants Certificate issued to him by the proper Government official of the Philippine Islands, under seal, after verifying the truth of the statements set forth in said certificate, is not entitled to be admitted to the

United States under the Chinese Exclusion Law, even though identified as the proper holder thereof.

III.

The Court erred in holding and deciding that the petitioner's Section Six Certificate had been contradicted, for the reason that petitioner is nineteen years of age and not an adult.

IV.

The Court erred in holding and deciding that petitioner had not qualified under Section Six of the Chinese Exclusion Law, and that if admitted he would likely become a public charge.

HUGH C. TODD,
Attorney for Applicant.

Service accepted.

C. T. McKINNEY,
Asst. U. S. Atty.

[Endorsed]: Filed Mar. 27, 1926. [16]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

Upon the filing and reading of the petition for appeal in the above-entitled matter, and the Court being fully advised in the premises, it is

HEREBY ORDERED that the appeal be allowed as prayed for.

Done in open court this 27th day of March, 1926.

JEREMIAH NETERER,

District Judge.

O. K.—C. T. McKINNEY,

Asst. U. S. Atty.

[Endorsed]: Filed Mar. 27, 1926. [17]

[Title of Court and Cause.]

STIPULATION RE TRANSMISSION OF
ORIGINAL IMMIGRATION RECORD AND
FILE OF DEPARTMENT OF LABOR.

IT IS HEREBY STIPULATED AND AGREED by and between Hugh C. Todd, Esquire, attorney for petitioner above named, and Thos. P. Revelle, Esquire, and C. T. McKinney, Esquire, attorneys for respondent, Luther Weedin, United States Commissioner of Immigration, that the original file and record of the Department of Labor covering the proceedings against the petitioner above named, which was filed with the respondent's return to the order to show cause in the above-entitled cause, may be by the Clerk of this court sent up to the Clerk of the Circuit Court of Appeals, as a part of the appellate record, in order that the said original immigration file may be considered by the Circuit Court of Appeals, in lieu of a certified copy of said record and file, and that said origi-

nal records may be transmitted as part of the appellate record.

HUGH C. TODD,
Attorney for Petitioner.
THOS. P. REVELLE,
United States Attorney.
C. T. MCKINNEY,
Assistant United States Attorney.

[Endorsed]: Filed April 6. 1926. [18]

[Title of Court and Cause.]

ORDER FOR TRANSMISSION OF ORIGINAL
RECORD OF DEPARTMENT OF LABOR.

Upon stipulation of counsel, it is by the Court ORDERED, and the Court does hereby ORDER, that the Clerk of the above-entitled court transmit with the appellate record in said cause the original file and record of the Department of Labor, covering the deportation proceedings against the petitioner, Chan Hai, which was filed with the respondent's return in the above-entitled cause, directly to the Clerk of the Circuit Court of Appeals, in order that the said original immigration file may be considered by the Circuit Court of Appeals in lieu of a certified copy of said record.

Done in open court this 12th day of April, 1926.

JEREMIAH NETERER,
United States District Judge.

Service accepted 4/6/26.

C. T. McKINNEY,
Asst. U. S. Atty.

[Endorsed]: Filed Apr. 12, 1926. [19]

[Title of Court and Cause.]

PRAECIPE OF APPELLANT FOR TRAN-
SCRIPT OF RECORD ON APPEAL.

To the Clerk of the Above-entitled Court:

You will please prepare and duly authenticate the transcript and following portions of the record in the above-entitled case for appeal of the said appellant, heretofore allowed to the United States Circuit Court of Appeals for the Ninth Circuit.

1. Petition for writ of habeas corpus.
2. Order to show cause.
3. Return to order to show cause.
4. Decision of Honorable Jeremiah Neterer denying writ, filed March 22, 1926.
5. Order denying writ.
6. Petition for appeal.
7. Notice of appeal.
8. Order allowing appeal.
9. Assignment of errors.
10. Citation.
11. Stipulation.
12. Order for transmission of original record.

13. Cablegram.
14. This praecipe.

HUGH C. TODD,
Attorney for Appellant.

[Endorsed]: Filed Apr. 6, 1926. [20]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 20, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true, and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant for making record, certifi-

cate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [21]

Clerk's fees (Act of February 11, 1925) for making record, certificate or return 47 folios at 15¢.....	\$7.05
Certificate of Clerk to transcript of record, with seal.....	.50
Certificate of Clerk to original exhibits, with seal50
<hr/>	
Total.....	\$8.05

I hereby certify that the above cost for preparing and certifying record, amounting to \$8.05 has been paid to me by the attorney for appellant.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 15th day of April, 1926.

[Seal] ED. M. LAKIN,
Clerk United States District Court, Western District of Washington.

By S. M. H. Cook,
Deputy. [22]

[Title of Court and Cause.]

CITATION.

United States of America,—ss.

To the Honorable LUTHER WEEDIN, United States Commissioner of Immigration at the Port of Seattle, Washington, GREETING:

WHEREAS, Chan Hai has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment, order and decree lately, on, to wit, on the 22d day of March, 1926, rendered in the District Court of the United States for the Western District of Washington, made in favor of you, adjudging and decreeing that the writ of habeas corpus as prayed for in the petition herein be denied.

You are therefore cited to appear before the United States Circuit Court of Appeals, in the City of San Francisco, State of California, within the time fixed by statute, to do and receive what may obtain to justice to be done in the premises.

GIVEN under my hand in the City of Seattle, in the Ninth Circuit, this 12th day of April, in the year of our Lord nineteen hundred and twenty-six, and of the Independence of the United States the one hundred fiftieth.

[Seal]

JEREMIAH NETERER,
United States District Judge.

Service accepted 4/6/26.

C. T. McKINNEY,
Asst. U. S. Atty. [23]

[Endorsed]: Filed Apr. 12, 1926. [24]

[Endorsed]: No. 4839. United States Circuit Court of Appeals for the Ninth Circuit. Chan Hai, Appellant, vs. Luther Weedin, as Commissioner of Immigration at the Port of Seattle, Washington, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed April 17, 1926.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

